

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

David R. Carlson,

Case No. 19-cv-0424 (WMW/BRT)

Petitioner,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

State of Minnesota,

Respondent.

This matter is before the Court on the April 4, 2019 Report and Recommendation (R&R) of United States Magistrate Judge Becky R. Thorson. (Dkt. 6.) The R&R recommends that Petitioner David R. Carlson's petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, be dismissed because it is an improper second or successive petition. *See* 28 U.S.C. § 2244(b)(3)(A). The R&R also recommends that no certificate of appealability be issued.

Carlson filed a timely objection to the R&R. When an objection is filed, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C); *accord* Fed. R. Civ. P. 72(b)(3); LR 72.2(b)(3). The only portion of the R&R that Carlson specifically objects to is the R&R's characterization of the timing of his trial attorney's alleged statement. But the factual allegations underlying Carlson's ineffective-assistance-of-counsel claim have no bearing on the R&R's legally sound conclusion that Carlson's

petition is an improper successive petition. For this reason, Carlson's objection is overruled.

Carlson does not object to any other aspect of the R&R. Therefore, the Court reviews the remaining portions of the R&R for clear error. *See* Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment; *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Having conducted its review of those parts of the R&R to which Carlson does not object, the Court finds no clear error.

ORDER

Based on the R&R and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. Petitioner David R. Carlson's objection to the R&R, (Dkt. 7), is **OVERRULED**.
2. The April 4, 2019 R&R, (Dkt. 6), is **ADOPTED**.
3. Petitioner David R. Carlson's petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, (Dkt. 1), is **DISMISSED WITHOUT PREJUDICE**.
4. The Court declines to grant a Certificate of Appealability. 28 U.S.C. § 2253(c)(2).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 3, 2019

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge